

2839
#6/ELECTION
Shawn
8/19/03

09/918,877
DP-304,881

PATENT

In re: Benson et al.

Serial No.: 09/918,877 Art Unit: 2839

Filed: 07/31/2001 Examiner: Abrams, N.

For: BATTERY PACK HAVING PERFORATED TERMINAL
ARRANGEMENT

Docket No.: DP-304,881

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. § 121

Dear Sir:

This paper is responsive to the Office Action mailed June 23, 2003 (Paper No. 5).

Applicants hereby elect, with traverse, the invention of Group I for prosecution on the
merits (presently claims 1-14) drawn to an electrical terminal. 

The Examiner has restricted the present application as follows:

Group I: claims 1-14; and

Group II: claims 15-20.

CERTIFICATE OF MAILING

I hereby certify that this *Response to Restriction Requirement* is being deposited with the
United States Postal Service in an envelope as first class mail addressed to the Commissioner for
Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23 day of July, 2003.


Brenda D. Chambers

There are two criteria for proper restriction:

1. The inventions must be independent or distinct as claimed;
2. There must be a serious burden on the examiner if restriction is not required (MPEP § 803).

Accordingly, a restriction is proper only when the restricted inventions are independent and patentably distinct (MPEP § 803). Further, the burden is on the examiner to provide reasons and/or examples in support of restriction (MPEP § 803). The Office has not carried this burden.

The Office has asserted that the inventions are related as a product and use. As stated in the Office Action:

The inventions are distinct if either or both of the following can be shown: (1) the process for using the product *as claimed* can be practiced with another materially different product or (2) the product *as claimed* can be used in a materially different process of using that product (MPEP § 806.05(h)).
(emphasis added).

The Office has further stated in "the instant case the electrical terminal could be used to connect conductors of a general type apart from any 'grid of a battery unit.'

However, the Office has not explained how the process of connecting conductors of a general type is materially different from the process of connecting conductors involving a "grid of a battery unit." While these are different, the MPEP requires that the Examiner show that they are "materially" different. The Office has not done this. Accordingly, Applicants respectfully submit that the example provided by the Office does not establish that the product as claimed can be used in "a materially different process" of using that product. Accordingly the Office has not established distinctiveness as required for restriction.

Applicants respectfully submit that the Office has thus not carried its burden of persuasion in establishing distinctness and respectfully request withdrawal of the restriction requirement.

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Applicants respectfully submit that the restriction requirement set forth in Paper No. 5 is improper, and respectfully request that it be withdrawn.

Respectfully submitted,

Date: July 23, 2003

By: 

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